



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wilshire Foam Products, Inc.

File: B-234628

Date: April 20, 1989

DIGEST

Protest challenging agency decision to set aside procurement under section 8(a) of the Small Business Act on the basis that it was not the most economical approach nor in the best interests of the government, as had been stated by the agency, is dismissed because the General Accounting Office only will review a decision to set aside a procurement to determine whether the regulations have been followed or whether there has been a showing of any bad faith or fraud on the part of the government officials.

DECISION

Wilshire Foam Products, Inc., protests the Department of the Air Force's decision to set aside a contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), for non-conductive fuel foam kits for use in the fuel cells of A-10 aircraft. Section 8(a) authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

We dismiss the protest.

By the terms of the Small Business Act, a contracting officer is given the discretion to let a contract to SBA upon such terms and conditions as agreed to by the agency and the SBA. Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, we have limited our review of actions under the Section 8(a) Program to determining whether the regulations have been followed and whether there has been a showing of bad faith or fraud on the part of government officials. Bucky X-Ray International Corp., B-231353, July 25, 1988, 88-2 CPD ¶ 79.

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The record shows that the supply of this item entails two major manufacturing steps. First, sheets of foam are obtained from qualified manufacturers, then the foam is fabricated (cut) into the shape needed for insertion into the fuel cell. The Air Force states its original strategy was to fabricate the kits itself from bulk foam procured from a qualified manufacturer, but it rejected that approach because of facility and manpower constraints. The Chicago District Office of the SBA requested that a contract for the fabrication of the foam kits be reserved under the Section 8(a) Program for a manufacturer in that area. The contracting officer states that the section 8(a) firm has been found capable of meeting this requirement and that:

"The Acquisition Strategy Panel . . . determined the following strategy to be the most economical and in the Government's best interest;

"(1) Acquire the bulk fuel foam from qualified vendors [under one solicitation and],

"(2) Supply bulk fuel foam as GFE [Government-Furnished Equipment] to the 8a firm [for fabrication of the fuel cell kits under another solicitation]."

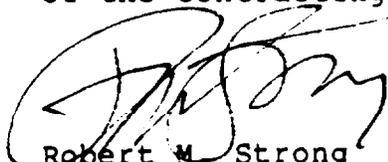
Wilshire fabricates fuel cell kits from foam which it obtains from qualified manufacturers. It states that it would be interested in competing for the fabrication contract and objects to its being set aside under the Section 8(a) Program, contending that the Air Force's procurement strategy neither is the most economical approach nor in the government's best interest.^{1/}

Wilshire does not allege, much less make a showing of, bad faith or fraud on the part of the government officials, but rather disputes the soundness of the Air Force's procurement strategy. In response to the Air Force's argument that we should dismiss this challenge to a section 8(a) set-aside, Wilshire states that while it recognizes our Office does not generally review decisions of contracting officers to set aside contracts under the Section 8(a) Program it contends that we can, and should, review the underlying acquisition strategy to assess whether the Air Force reasonably

^{1/} Wilshire has requested that it be provided with certain Air Force documents so that it can further develop these arguments. In view of our conclusion that this protest is not appropriate for our consideration, the document request is denied.

concluded that it would be "most economical" and in the government's "best interest."

We think, however, that the soundness of the strategy of the Air Force itself acquiring the bulk foam from a qualified supplier and then furnishing it as GFE to the fabrication contractor is secondary to the more fundamental decision to set aside the procurement under the Section 8(a) Program at the request of the SBA. In this regard, we note that while generally required, full and open competition is subject to certain limited exceptions, one of which is statutory authorization permitting contracting without full and open competition, such as the Section 8(a) Program. Federal Acquisition Regulation § 6.302-5. Given the broad discretion afforded to the contracting agency by the statute we limit our review to determining whether the regulations have been followed and whether there has been bad faith or fraud on the part of government officials. Since the protester has not made a showing of any bad faith or fraud on the part of the contracting agency the protest is dismissed.



Robert M. Strong

Associate General Counsel